

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

D&Z AUCTION RESELLERS, LLC AND  
GUSTAVO A. MORENO PONCE

Plaintiffs

v.

MEDI DATA CORPORATION, ET AL.

Defendants

CASE NO. 3:19-cv-01242-JAG

Copyright Infringement  
Violation of Digital Millennium Act  
Computer Fraud and Abuse

Jury Trial Requested

**MOTION REQUESTING ORDER TO HOLD MICRO MERCHANT SYSTEMS’  
MOTION TO DISMISS IN ABEYANCE IN LIGHT OF PLAINTIFFS’  
AMENDED COMPLAINT**

**TO THE HONORABLE COURT:**

**COME NOW** defendants Farmacia Jireh, Inc.; Empresas Alvasie, Inc. and Marilyn Vega d/b/a Farmacia Marilyn and very respectfully state, request and pray:

1. On September 13, 2019, codefendant Micro Merchant Systems (“MMS”) filed a motion to dismiss the appearing parties’ crossclaim as to said codefendant [DKT 82].

2. On September 27, 2019 the appearing codefendants requested a brief extension of time to oppose MMS’ motion to dismiss the crossclaim [DKT 93], which the Honorable Court granted on October 3, 2019 [DKT 104]. The extended term to file the appearing parties’ opposition to MMS’ dispositive motion is due today, October 8, 2019.

3. In light of the foregoing, the appearing parties were prepared to file a motion requesting leave to file an amended crossclaim against all codefendants, to clarify the basis of the crossclaim and furthermore, to assert additional causes of action as to MMS and the other codefendants. The appearing parties are convinced that the amended crossclaim will eventually render moot MMS’ motion to dismiss.

4. However, yesterday, October 7, 2019, plaintiffs filed an amended complaint [DKT 106] in which they added additional parties to the case; dropped at least one cause of action and amended other details of the original pleadings.

5. In reaction to plaintiff's amended complaint, yesterday co-defendants Farmacia Cuquimar, Farmacia Dorado, Farmacia Islote Drug and Farmacia Los Angeles, Inc. filed a motion to strike the amended complaint [DKT 107] based on the fact that plaintiff is attempting to amend the complaint without first obtaining permission from the Court, as required under Rule 15(a)(1)(B) of the FRCP.

6. As such, the appearing parties are facing a quandary. If this Honorable Court permits the filing of an amended complaint, the appearing parties will naturally have to file a responsive pleading and present its defenses. Also, the amended complaint would possibly force the appearing parties to again file a *de novo* or amended crossclaim.

7. In light of the foregoing and for the sake of procedural economy and order, the appearing parties consider that it would be in the best interest of the process to hold MMS' motion to dismiss in abeyance or even deny it without prejudice at this time; wait for the ruling of the Honorable Court regarding the pending amended complaint and if it is allowed, then present the answer to the complaint and the amended crossclaim.

8. In other words, the filing at this procedural juncture of either an amended crossclaim and/or a reply to MMS' motion to dismiss the crossclaim could be untimely, considering the pendency of the amended complaint.

**WHEREFORE**, Defendants respectfully request that this Honorable Court acknowledges the facts stated herein and grants this motion.

**I HEREBY CERTIFY** that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

**RESPECTFULLY SUBMITTED.**

In Guaynabo, Puerto Rico, this 8th day of October 2019.

s/RICARDO CASTRO VARGAS  
USDC/PR NO. 228,314

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